IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 977 of 2005

with

CIVIL APPLICATION No 3173 of 2005

Date of Decision: 19-04-2005

UNITED INDIA INSURANCE CO LTD

Versus

LEGAL HEIRS OF DECEASED MUGAT BHAI NAGARBHAI

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Appellant Mr.M.J.Shelat, Adv.

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

#. This appeal is directed against the award of Motor Accident Claims Tribunal (Aux.), Surendranagar, MAC Petition No.165 of 2000 dated 3.12.2004.

Whether reporters of Local Papers may be allowed to see the Judgment?

#. Shortly stated, Mugatbhai Nagarbhai (deceased) met with an accident on 26.5.1999 and died. Claimants are legal heirs of deceased, therefore, they claimed compensation of Rs.10,00,000/= from the opponents = owner, driver and Insurance Company of the truck involved in the accident bearing registration No.GTX-4843. Opponent-4 is owner of motorcycle bearing registration No.GJ-3-8766 which was hit by the truck. Allegation is that due to rash and negligent driving by driver of the truck, accident took place, otherwise, it could be avoided. Deceased was 24 year old at the time of accident, maintaining good health, doing agricultural work, earning Rs.1,50,000/= per annum and claim is for Rs.10,00,000/= on all accounts against the opponents.

#. Except for Insurance Company, other opponents have not filed reply. Insurance Company denies the age and income of deceased, negligence of driver of truck and taking place of accident. Rash and negligent driving on the part of driver of motorcycle is alleged, deceased being pillion rider. Owner of motorcycle has not contested the claim and remained absent, therefore, proceeded exparte. Issues were framed, evidence recorded. Claims Tribunal came to the conclusion that accident took place as alleged by claimants. Compensation of Rs.9,40,000/= is awarded with interest at the rate of 9% p.a. from the date of application till payment.

#. Objection of appellant against the award is that excessive compensation has been awarded. It is contended that in absence of evidence, claim that income of deceased was Rs.1,50,000/= per year cannot be accepted, therefore, reduction thereof to half by the Claims Tribunal is not justified. In absence of positive evidence as to income of deceased, assessment of compensation was not possible, otherwise, deceased was one of the members in the joint family and land passes on to other members of the family. Therefore, loss could not be to the extent assessed by the Claims Tribunal. Reference to Apex Court decision in State of Haryana v. Jasbir Kaur [(2003) 7 SCC 484] is made.

#. Matter is considered, record perused. In Jasbir Kaur case (supra), claimants possessed four acres of land, claim was for Rs.10,00,000/=. Claims Tribunal awarded Rs.6,50,000/=, claimants having possessing four acres of land. However, the Apex Court took the income at Rs.3,000/=, applied multiplier of 18 and awarded compensation of Rs.4,34,000/= on the same facts. In this case, land is 25 acres. Therefore, income is stated to be Rs.1,50,000/= per year by widow of deceased who was looking after the land and family dependent on him. Against annual income of Rs.1,50,000/=, Claims Tribunal reduces the same to half. Evidence of widow is that deceased was engaged in various operations of agriculture himself, therefore, after the deceased, claimants have to engage others who are not expected to attend agricultural operations same way, as the deceased had been doing. With regard to agricultural operations, of course land passes on to survivors but the contribution of the deceased cannot be lost sight of. Deceased was looking after the agricultural operations himself. With agricultural land to the extent of 25 acres, it is quite enough to earn the income stated by the widow. Shri Shelat, learned counsel for the appellant, submits that widow does not have record to prove that income was Rs.1,50,000/= nor there is evidence to show the nature of land, irrigated, unirrigated, barren, etc. and except for supervision, no other work was being undertaken by deceased. We do not appreciate this contention. As said by the widow, deceased was attending various agricultural operations himself. No question as to the nature of land has been put to her by the appellant, therefore, raising of objection at this stage is not justified. In absence of evidence to the contrary, there is no reason why the statement of widow of the deceased should not be accepted. Agricultural operations are difficult, therefore, migration of young ones from villages to cities. Evidence discloses that deceased belonged to reasonably well-to-do family. He possessed Honda motorcycle, telephone, gas connection, account in bank, purchased residential plot in Surendranagar, which is District Headquarter. Documents to this effect have been placed on record. With this kind of evidence, assessment of compensation by the Claims Tribunal is justified. Division Bench of this Court said in paragrah-11 of Dahiben wd/o. Hirabhai Motibhai Patel v. Chitrabhai Chakabhai Makwana & Ors. (1982(1) GLR 498):

> "11. It is well settled that while assessing compensation under secs. 1A and 2 of the Fatal Accidents Act, compensation is to be evaluated under two heads, viz: (i) the loss of the amount

which would have been spent on the members of the family of the dependents of the deceased victim by the deceased during the life-time of his expected usual life and (ii) loss to the estate of the deceased. Now, under the first head the loss has an element for maintenance, while under the second head the loss has a saving element, though the Court should not assess twice over the loss under the first head. Under Lord Wright's formula laid down in Devies v. Powell Duffryn Associated Callieries Ltd; 1942 A.C. 601, the loss is ascertained by first arriving at the estimate of the annual dependency amount from the income of the deceased after deducting the amount which he would have spent on himself and the damage on his head of loss of the dependents is arrived at by awarding a lump sum amount which is calculated by applying a proper multiplier to the amount of one year's dependency. it cannot be a matter of debate in view of the settled legal position as far as this Court is concerned that no different approach or yardstick is to be adopted for assessing the compensation in case of fatal accidents to agriculturists on the supposed ground that the agriculture estate remains intact and is inherited by the heirs of the deceased. There is no justifying basis for this view because even in cases of victims under the Fatal Accidents Act who may be non cultivators, there may be some properties in the nature of investments, savings, etc.; which may come in the hands of the heirs and representatives of the deceased as a result of his death and which were also available in the life time of the victim. This would, however, not justify a Tribunal to take a different view in assessment of damages on the first head under sec.1A of the Fatal Accidents Act merely because agricultural land holdings remain intact and is available to the dependents. The fact that the dependents have inherited agricultural holdings of the deceased because of the act of tort-feasor is totally irrelevant and is completely collateral matter. The extent of holding of a cultivator in the hands of the dependents may be a relevant factor while, selecting the appropriate multiplier and the Tribunal may keep in mind what has remained intact with the dependents, but it cannot have a bearing on the question as to what was the loss to the dependents on account of maintenance allowance."

With evidence on record, it can be legitimately said that Claims Tribunal has not committed any error in assessing the compensation in this case calling for interference by this Court.

#. Consequently, we find no merit in this appeal and the same is dismissed. Compensation awarded be paid to the claimants on proper verification. Amount of Rs.25,000/= deposited in the Registry of this Court be transmitted to MACT concerned for payment to the claimants. Civil Application stands disposed of.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K.RATHOD)
JUDGE

(sunil)